

REMARKS

The present amendment is submitted in response to the Office Action dated February 10, 2003, which set a three-month period for response. Filed herewith is a Request for a One-Month Extension of Time, making this amendment due by June 10, 2003.

Claims 11-19 are pending in this application.

In the Office Action, claims 11, 12, and 13 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,281,974 to Scheiner et al. Claims 14-19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Scheiner et al.

The Applicants have reviewed not only the cited reference to Scheiner '974, but also the parent application to the Scheiner '974 patent (09/092,378, filed June 5, 1998, of which the Scheiner '974 reference is a CIP). The Applicants compared the Scheiner '974 case with the '378 parent case, and determined that the same subject matter of Scheiner '974 was disclosed in the '378 application. Thus, for purposes of relevance of the cited reference to the pending application, the relevant date is the priority date of Scheiner '974, or June 5, 1998.

Upon review of the parent case to Scheiner, the Applicants determined further that the subject matter of the present invention was already invented prior to June 5, 1998, and indeed, prior to the priority date of the present application itself, March 18, 1998. Thus, the cited reference to Scheiner is not a valid reference to support the cited grounds of rejection, since the present invention was conceived and invented prior to the priority date of this reference.

In support of the above, the Applicants submit herewith nine attachments, which show conception and invention of the subject matter of the present invention, prior to the priority date of the cited reference to Scheiner '974.

The Applicants will file a Supplemental Amendment within 30 days of the present amendment, with a declaration signed by the inventors, attesting to the dates of the attachments and the relevant dates of conception and invention of the present invention.

Attachment I ("Anlage I") contains a disclosure of the so-called "RT-measuring System" ("only for internal use") of February 3, 1998. In this document, the present invention is already described (in the German language). For example, the second to the last figure of this disclosure (amorphous SDS System: measurement and stimulation) is practically identical to Figure 2 of the present application, reference to which is made in the present application to explain the present invention.

From the date February 3, 1998, it is evident that the present invention not only predates the application date of June 5, 1998, but in addition, also predates the priority date of March 18, 1998.

As one can see from Attachment I in the lower edge, the RT-Measuring System was invented by the firm ETA-Optik, GbmH. This firm is a daughter firm of the firm STEAG HamaTech, AG. Thus, the application was also filed under the mother corporation, STEAG HamaTech AG.

Attachment II ("Anlage II") contains the copy of a letter of the "Optical Disc Technology Centre" (a division of the firm Philips, Netherlands) dated March 10, 1998, including a table "ODTC Phase Change stacks for ETA-Optik to determine optical constants". The date March 10, 1998 can be found on this list to the lower left. This table contains the layer-stack for DVD-RW, which accurately corresponds to the measurement object of the embodiment described in the present application.

Attachment III ("Anlage III") shows and describes the measuring method of the present invention in a document from March 18, 1998 (time, 5:26) (four pages). This

document was composed in the English language and shows and describes the present invention already at the noted point in time (that is, precisely on the date of the priority application in Israel).

Attachment IV ("Anlage IV") stems from the same date (see, for example, page 1, upper right, handwritten comments). From this document, likewise, it is evident that the invention already was conceived on March 18, 1998. This attachment describes the use of the RT tester on CDs of the firm Philips, who was offered this measuring method or this measuring device.

Attachment V ("Anlage V") shows and describes the inventive measuring method, as well as a device for this purpose in a prospectus, which was distributed at a convention at REPLITech in Utrecht, Netherlands. Again, the present invention is described in this prospectus.

Attachment VI ("Anlage IV") is a shipment statement dated May 28, 1998 that was sent to the firm STEAG HamaTech GmbH, that is, the mother corporation, which is also the Applicant of the present invention.

Attachment VII ("Anlage VII") includes emails between the firm Philips and the firm ETA-Optik GmbH dated May 27 and 29, 1998, which likewise relate to the present invention.

Attachment VIII ("Anlage VIII") shows a measuring example and results dated May 28, 1998, which again relates to and explains the present invention (comparison of measured reflectance spectrum and model calculation – four diagrams).

Attachment IX ("Anlage IX") shows a data table dated May 28, 1998, relating to "sputter samples for ETA-RT test verification" (two pages).

In conclusion, the accompanying attachments I through IX show that the invention already was conceived and known prior to the priority date, that is, the first

application date, of the Scheiner '974 reference. Therefore, the Applicants respectfully submit that this is not a valid reference for supporting the rejection of claims 11-19 under 35 U.S.C. 102 and 103. Furthermore, the Applicants respectfully request withdrawal of this rejection and an allowance of the present application.

In light of the foregoing arguments in support of patentability, the Applicants respectfully submit that this application now stands in condition for allowance. Action to this end is courteously solicited.

Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert W. Becker", with a stylized flourish at the end.

Robert W. Becker, Reg. No. 26,255
for applicant(s)

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